

United States District Court
for the
Southern District of Florida

United States of America,)
Plaintiff)
v.) Criminal Case No. 19-20245-CR-
De'Undre Rashad Robert Turner,) Scola
Defendant.)

Order Denying Motion to Suppress Following Evidentiary Hearing

On August 16, 2019, the Court conducted an evidentiary hearing on Defendant De'Undre Rashad Robert Turner's motion to suppress. (Def.'s Mot. to Suppress, ECF No. 21.) In his motion Turner claims that evidence found as a result of an improper search should be suppressed.

The evidence at issue in this case was seized through a warrantless search. "Upon a motion to suppress evidence garnered through a *warrantless* search and seizure, the burden of proof as to the reasonableness of the search rests with the prosecution. The Government must demonstrate that the challenged action falls within one of the recognized exceptions to the warrant requirement, thereby rendering it reasonable within the meaning of the fourth amendment." *United States v. Freire*, 710 F.2d 1515, 1519. (emphasis in original) (internal citation omitted).

The Government presented the testimony of Detective Angel Delgado and Officer Ti'Andre Bellinger at the evidentiary hearing. After considering the credible evidence and testimony and the relevant legal authorities, and for the reasons more particularly set forth below, the motion is **denied**.

1. Background of the case

During the daytime on April 8, 2019, a team of detectives including an agent from Homeland Security Investigations ("HSI"), a Violent Gang Task Force ("VGTF") Special Agent, and detectives and officers from the City of Miami Police Department approached the residence of Jason Birdsong at 759 NW 70th Street to serve a DNA warrant unrelated to Turner. This area is a high crime area known for gun and drug activity. The detectives encountered a Dodge Charger parked lawfully in front of the townhome complex. Detectives saw, in plain view, a firearm in the waistband of the front passenger. The front passenger said he had a permit for the gun and held it in his hands. He was asked to exit the car and told officers there was another gun under the passenger seat. The rear passenger

was asked to exit. Turner, the driver, seated with his hands on the wheel, was asked for identification and produced it. Officer Bellinger noticed Turner was nervous and shaking as he removed his wallet from his pants to provide his Florida driver license. After a second gun was found under the passenger seat, Turner was also asked to exit and asked if he had a weapon, to which he responded, "no." Officer Bellinger immediately began to search him, and patted down the front of his shirt. Through the body-worn camera, Turner can be seen asking why he is being searched. Officer Bellinger then directed him to place his hands on the car, and the officer continued to touch Turner with his hands. Ultimately, a gun is pulled from Turner's front waistband.

The Government has agreed not to introduce any of the post-arrest statements of the Defendant so to the extent the motion seeks to suppress those statements, the motion is deferred until such time, if ever, that the Government announces its intent to use the statements after its case in chief.

Summary of testimony presented at the hearing:

Angel Delgado

Delgado has been a City of Miami Police Officer for 7 years and has been a detective in the gang unit for 2 years. He is familiar with the Model City area and knows it to be a high crime area with violent and drug crimes including homicides. Delgado is also familiar with the address of 759 NW 70th Street. There was a search warrant issued for that residence on March 20, 2019, where drugs and a firearm were recovered. The warrant was based upon a number of drug sales conducted at the address shortly prior to March 20th.

On April 8, 2019, the detectives returned to the address to execute a DNA search warrant on Jason Birdsong, one of the suspects from the March 20th search. Delgado was concerned about the presence of drugs and guns being at the premises when they returned on April 8, 2019. There are three apartment units within 759 NW 70th Street and Birdsong lived in one of the units.

The officers had a photo of Birdsong and knew a layout of the address. They also had information about Birdsong's associates and any vehicles associated with Birdsong. The police had no information about the Defendant or his car being associated with Birdsong.

On April 8, 2019, when Delgado arrived at 759 NW 70th Street there was a blue Dodge Charger with several males inside parked lawfully in the driveway. The driveway is shared by all three units at the address. As Delgado approached the car, which was directly on his way into the building, he could see a firearm in the waistband of the front right passenger. Delgado saw that none of the three

occupants was Birdsong. Delgado asked if there were any guns in the car and the front right passenger said he had a gun but also had a permit for the gun. The front right passenger exited holding the permit in his left hand and spontaneously told Delgado that there was another gun under the passenger seat. Delgado asked the rear passenger to exit. Delgado did not observe any furtive movements. After Officer Borrego found the second firearm under the passenger seat, the officers then asked the driver to exit for officer safety.

Delgado was running a records check on the guns and to verify the passenger's permit while other officers dealt with the driver.

Delgado ran the prior record of the rear passenger and learned he was a convicted felon. Because the gun was found under the right front passenger seat, he was not arrested but a DNA swab was taken of him to compare to the gun in case he had possessed the gun and placed it under the seat in front of him.

Ti'Andre Bellinger

Bellinger has been a City of Miami Police Officer for three years. He is assigned to the North Station Problem Solving Team. Bellinger was asked to assist the gang unit in executing the search warrant. Bellinger was familiar with the area of the search warrant and grew up in that area less than one block away. Bellinger knows it is a high crime area. Bellinger was aware that the subject of the search warrant could be armed and dangerous.

Bellinger walked up and saw Delgado speaking to the passenger and saw Delgado retrieving a firearm. Bellinger walked around to the driver's side of the car and saw Turner. Bellinger recognized Turner as someone he knew from growing up in the area. Turner had dated Bellinger's sister. Bellinger asked Turner for his driver's license and he appeared nervous. An officer commented, "he's shaking." Bellinger asked Turner if he was okay. When the second firearm was found, Turner was asked to step out of the car for officers' safety.

Bellinger asked Turner if he was armed and he said "no." Bellinger asked Turner to put his hands on the car and Turner asked, "what's the purpose of the search?" Bellinger saw a bulge in Turner's back pocket and started patting down Turner. The bulge is visible on the body camera footage. Turner got visibly upset and asked why he was patting him down. Turner then quietly said to Bellinger, "I have a gun." Although that statement is not heard on the body camera footage, Bellinger is 5'7" tall, Turner is over 6' tall, the camera is on Bellinger's right chest and Turner is facing away from the camera. Bellinger suddenly grabbed Turner in a bear hug and yelled, "gun!" Bellinger had not frisked the area of Turner's body where the gun was found and the gun was not visible. The only reasonable explanation for Bellinger's sudden action was his having heard Turner's

statement. A gun was recovered from Turner and Bellinger asked Turner if he was crazy, told him he was wearing a body camera and told him, “you can’t do this when you know somebody.”

2. The warrantless stop and search of Turner was justified.

As a preliminary matter, the Court accepts the testimony of Delgado and Bellinger. Their testimony was substantially corroborated by the footage of the body cameras. The one statement by Turner “I have a gun” is not captured on the body camera but the Court finds Bellinger’s testimony credible and further finds there is a reasonable explanation for the failure of the statement to have been captured on the video.

As an initial matter, the Court finds that police did not stop or detain the vehicle. The vehicle was parked in the driveway and there is no indication the vehicle was readying to leave. It was only when Delgado saw a firearm in the waistband of the right front passenger that he engaged that passenger in conversation and asked him to exit the vehicle.

The Fourth Amendment prohibits warrantless searches except when the search is conducted with consent or under certain exigent circumstances. *See Florida v. Royer*, 460 U.S. 491, 497 (1983). A court must examine the totality of the circumstances in order to determine whether a seizure is reasonable under the Fourth Amendment. *See Samson v. California*, 547 U.S. 843, 848 (2006).

“When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.” *Terry v. Ohio*, 392 U.S. 1, 24 (1968). It was reasonable for Delgado to ask the front passenger to exit, even though the passenger claimed he had a valid permit to carry the firearm. And, it was reasonable to briefly detain that individual to verify the validity of the permit. Significantly, as soon as he exited the vehicle, the front passenger told the police that there was another gun under the seat. He did not say “I have another gun.” That statement immediately placed the officers on notice that the driver and rear passenger could be possessing at least that firearm.

After the officers recovered the second firearm from under the passenger seat, it was reasonable of them to ask the rear passenger to exit since he could have easily placed the firearm there from the back seat and could have accessed the firearm from seat. The police had no information that either the Defendant or the rear passenger had a permit to carry the firearm and, shortly thereafter, the police learned the rear passenger is a convicted felon.

At the same time, the Defendant was acting visibly nervous. A police officer can be heard saying on the video “he’s shaking.” And immediately thereafter Bellinger asked Turner if he was okay, corroborating Bellinger’s testimony that Turner was nervous.

The police were at the premises to execute a search warrant. Even though this was a DNA warrant and there was not the normal concern about destruction of evidence, there was still a need to ensure officer safety during the execution. *See Michigan v. Summers*, 452 U.S. 692, 702–03 (1981). The officers were in a high crime area known for violence and drugs; the address was the subject of an arrest involving drugs and a firearm within the past two weeks; two firearms were recovered within the vehicle; one passenger was a convicted felon; and, the driver was visibly shaking. And all of this unfolded in about two and a half minutes. “[T]here must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” *Terry*, 392 U.S. at 27.

The Court finds that under the totality of the circumstances the officers were justified in controlling the scene and briefly detaining Turner when they asked him to exit the vehicle. *See United States v. Lewis*, 674 F.3d 1298 (11th 2012). Under the totality of the circumstances the police were also justified in patting him down for a weapon as soon as he exited the vehicle and certainly after his admission to Bellinger that he had a gun. *Id.*

3. Conclusion

After considering the motion to suppress, the record, the testimony, and the relevant legal authorities, and for the reasons articulated in this order, the Court **denies** the motion to suppress evidence physical evidence (**ECF No. 21**).

Done and Ordered at Miami, Florida, on August 19, 2019.



Robert N. Scola, Jr.
United States District Judge